IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10769 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

CHAUHAN RAMJIBHAI KARSANBHAI

Appearance:

1. Special Civil Application No. 10769 of 2001

MR HD DAVE ASSTT GOVERNMENT PLEADER for Petitioner No. 1-2

MS SEJAL K MANDAVIA for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 03/05/2003

ORAL JUDGEMENT

#. Heard learned AGP Mr.H.D.Dave appearing on behalf of the petitioner - State of Gujarat and learned advocate Ms.Sejal Mandavia for respondent workman.

With the consent of the learned advocates for the respective parties, this matter is taken up for final hearing today.

#. The petitioner has challenged the award passed by the Labour Court, Bhavnagar in Reference No.469 / 1990 dated 7th February, 2001 wherein termination order has been set aside and granted reinstatement on the post of Draftsman [Civil] or an other equivalent post with continuity of service and full wages with all consequential benefits.

#. It may be noted that this Court while dealing with this writ petition, has issued Rule and granted interim relief in terms of Para-13[C] vide order dated 7th November, 2001. Learned AGP Mr.H.D.Dave for the petitioner has submitted that the respondent workman was not a workman appointed by the petitioner but he was appointed as Apprentice under the Apprentices Act, 1961. Learned AGP Mr.Dave submitted that the workman appointed under Section 6 of the Apprentices Act on date 23rd May, 1989 upto 22nd May, 1990 for a period of one year and thereafter, his appointment has been terminated considering the provisions and in terms of the contact and thus, the workman was not appointed on permanent basis but he was appointed as per the provisions of the Apprentices Act, 1961. It is also contended that as per the Item No.10 of the agreement, the petitioner has not given any assurance to the respondent workman to absorb the petitioner in job. He also contended that therefore there is no question of giving any notice or notice pay or retrenchment compensation of any kind to the workman inasmuch as the provisions of Section 25-F of the I.D.Act is not applicable in the case of the respondent workman. It is also contended that notice was received from the workman and the same was replied by the petitioner vide communication dated 12thJune, 1990 but despite this, the workman has raised the industrial dispute which referred for adjudication. He also submitted that before the labour court, relevant documents were produced by the petitioner vide Exh.7 where appointment order of the respondent workman and the letter showing his name forwarded for examination, was also produced. It is also contended that the petitioner has produced certain documents vide Exh.10, 14, 17, 21, 22, 65, 67, 68 and 69 respectively and after production of these documents on behalf of the petitioner, one witness viz. Deputy Executive Engineer Shri Ajitsinh Anopsinh Jadeja was examined at Exh.35 and on behalf of the respondent workman, certain document produced at Exh.80. Therefore, learned AGP Mr.H.D.Dave submits that once the respondent

workman was appointed under the provisions of the Apprentice Act, 1961 and the workman was not in service of the petitioner, then there is no need to comply with the provisions of Section 25-F of the Act. It is also the case of the petitioner that though there was sufficient documents on record, then also, the same has been ignored by the labour court and on the contrary, the labour court has granted reinstatement in favour of the workman. It is also contended that during the period of one year, the workman was as trainee and he was not receiving any wages from the petitioner but it was an amount of stipend that was being received by the respondent workman and therefore also, the labour court has committed gross error in granting relief in favour of the respondent workman.

#. Lastly, learned AGP Mr.H.D.Dave for the petitioner while pointing out page.37 of the petition, has contended that the contract so executed is not required to be registered being the general terms and conditions and therefore, such contract was not registered and this is the only ground, on which, the labour court has relied and considered that he was not apprentice but since the contract was not registered one, he was workman and therefore, his submission is, the labour court has committed error in considering the fact that the workman was not appointed under the Apprentices Act but he was considered to be workman employed by the petitioner.

#. Learned advocate Ms.Sejal K. Manadavia appearing on behalf of the respondent workman has submitted that before the labour court, one application was submitted by the workman demanding certain documents from the petitioner vide Exh.8 stating that if agreement in respect between the parties, if registered under the Apprentices Act, then that registration is required to be produced by the petitioner. The labour court has passed the order with direction to the petitioner to produce registration of the said agreement by order dated 29th August, 1996. Thereafter, in response to the directions issued by the labour court, the petitioner has submitted reply vide Exh.10 wherein it was mentioned by by letter dated 31st March, 1990 one letter was issued in favour of the Principal of the Industrial Training Institute to give training to the respondent workman but there was no training given by the said institution to the respondent workman. However, answer given by the establishment by letter dated 27th February, 1996 that since period of one year is already over and therefore, there is no need to give training and to register the agreement after period

of one year and that agreement has automatically become cancelled and registration is required during continuation of the said agreement. It is also submitted by the learned advocate Ms.Manadavia that as per the letter dated 2nd August, 1996, it is made clear that the respondent workman has also not obtained any training and that agreement was not registered with the authority. This fact has been taken into account by the labour court rightly and if the agreement is not registered and no training was given to the respondent workman then, he become employee or workman of the petitioner. One year period wherein the respondent workman was working, not disputed by the petitioner and during that period, the workman completed 240 days continuous service and therefore, Section 25-F of the I.D.Act required to be complied with and since the same was not complied with undisputedly, which renders the termination order ab initio void. She also submitted that the labour court has rightly appreciated the evidence on record and come to the just conclusion. Learned advocate Ms.Mandavia relied upon decision of the division bench of this Court in case of BALLKHAN DOSHAN JOYA V. GUJARAT ELECTRICITY BOARD reported 2002 [1] LLN 1090. She also submitted that very identical situation and facts of the case before the Division Bench of this Court and this Court has come to the conclusion that if the agreement of the Apprentice of lineman as contract of apprenticeship was not registered and no training was obtained by the apprentice, then he has been considered as the workman within the meaning of Section 2[s] of the I.D.Act, 1947 and non observance of the mandatory provisions of Section 25-F of the Act makes the termination illegal. She also submitted that the labour court has rightly held that Section 25-F has not been complied with by the petitioner and therefore, the workman entitled to benefits under Section 25-F and that is how the order of termination rightly held to be illegal ab initio void and therefore the labour court has not committed error and hence, no interference of this Court is called for in the interest of justice.

#. I have considered submissions made by the learned advocates for the respective parties. I have also perused the award passed by the labour court concerned. It may be noted that two facts are not disputed between the parties. Firstly, the period of one year from 23rd May, 1989 to 22nd May, 1990 and secondly, the agreement of one year which was executed between the parties under the Apprentices Act, 1961 was not registered with authority as required under the Apprentice Act, 1961 and as such no training was given to the workman. These two

aspects are not disputed between the parties and these facts taken into consideration by the labour court and that agreement in question was not registered with the authority and no training was given to the workman and therefore, thus, agreement was not registered and no examination was given by the respondent workman and no such certificate has been produced before the labour court in absence of these aspects, the labour court has come to the conclusion that though initial appointment may be under the Apprentice Act, 1961 but ultimately certain provisions of the Apprentice Act, 1961 were not followed by the petitioner, for which, the workman is entitled to benefits under Section 25-F of the I.D.Act, 1947. The Labour Court has considered that in the definition of Section 2[s] of the I.D.Act, the apprentice are also included in the definition of the workman. The labour court has come to the conclusion that once the appointment under the Apprentice Act is not followed by subsequent provisions, then Industrial Disputes Act is applicable to the workman. The labour court has discussed this aspect in para-9 that the workman has completed service of one year and remained in service for more than actual 240 days and therefore, before terminating service, Section 25-F required to be followed and since the same was not followed and therefore the labour court has granted reinstatement with full backwages of the interim period.

#. Learned advocate Ms.Mandavia has relied upon decision of this Court in case of BALLKHAN DOSHAN JOYA V. GUJARAT ELECTRICITY BOARD reported 2002 [1] LLN 1090. wherein the Division Bench of this Court has considered in detail this question. The relevant observations made the division bench of this Court in para-6, 7 and 8 of the decision referred to above, are quoted below :

"6. After hearing the learned counsel for the parties and perusing the judgment of the learned Single Judge, we have formed opinion that this appeal deserves to be allowed. It is not in dispute that the employee was given second opportunity to serve in the board only by appointing him as an apprentice. After issuing the appointment order as an apprentice, the contract of apprentice was sent to the Apprentices adviser. S.3 of the Apprentices Act states that :

"A person shall not be qualified for being

engaged as an apprentice to undergo apprentice training in any designated trade unless he is fourteen years of age and satisfies such standards of education and physical fitness as may be prescribed."

In the apprentices rules as per the schedule appended to them, for appointment to the post of lineman, the prescribed qualification is that the candidate must have passed 8th Standard examination of the new course. The 8th Standard examination of new course 10 + 2 + 3 is not equivalent to 8th Standard examination of old course. The apprenticeship contract was, therefore, not registered only on the ground that the 8th Standard examination pass of the old course is not equivalent to 8th Standard examination pass of the new course. Section 18 of the Apprentices Act states that :

"every apprentice undergoing apprenticeship training in a designated trade in an establishment shall be a trainee and not a worker and the provisions of any law with respect to labour shall not apply to or in relation to such apprentice."

The provisions of S.18, as held by the learned Single Judge, are not attracted in the case of the present appellant, because, for want of registration of his apprenticeship contract, he cannot be treated to be an "apprentice" undergoing apprenticeship training. "Apprentice" has been defined under S.2[aa] to mean "a person who is undergoing apprenticeship training in pursuance of a contract of apprenticeship."

7. The other question that arises is that if the provisions of S.18 are not attracted to the employment of the appellant, as he was not undergoing an apprenticeship training pursuant to an apprenticeship contract, whether the provisions of other labour laws would be applicable to such employment. In the above respect, the learned Single Judge, has also noticed the definition of "workman" contained in S.2[s] of the I.D.Act. The definition Cl.[s] of S.2 of the I.D.Act expressly includes an "apprentice". Section 2[s] reads as under :

"2. Definitions : In this Act, unless there is anything repugnant in the subject or context -

[s] "Workman" means any person [including any apprentice] employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be expressed or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person -

[i] who is subject to the Air Force Act, 1950 [XLV of 1950] or the Army Act, 1950 [XLVI of 1950], or the Navy Act, 1957 [LXII of 1957], or

[ii] who is employed in the police service or as as officer or the other employee of a prison; or

[iii] who is employed mainly in a managerial or administrative capacity; or

[iv] who being employed in a supervisory capacity, draw wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature." [emphasis supplied.]

The definition of "workman" in I.D.Act, as it stands, was introduced by amendment on 21 August 1984 and at that time the Apprentices Act, 1961, containing S.18 in its provisions, was in existence. The Central Legislature was, therefore, fully alive to the situation that an apprentice, undergoing an apprenticeship training under an apprenticeship contract duly registered, would be only a "trainee" and not a "workman" to which other laws in respect of labour shall not

apply. Therefore, in including, in the definition of "workman", "apprentice" as well, the legislative intention appears to be obvious that such apprentices, who are not undergoing apprenticeship training under a duly registered apprenticeship contract, envisaged by the Apprentices Act, and to whom provisions of S.18 of the said Act are not applicable, would, nonetheless, be included in the definition of "workman" under the I.D.Act and would get all the protection of labour laws. The learned Single Judge may be right in his reasoning that even after non registration of the contract of apprenticeship the appellant would only be a "trainee", or an "apprentice", as intended by the parties and he would not be an "employee" or a "workman", within the meaning of the Apprentices Act. Even if, as stated by the learned Single Judge, the appellant, as a result of non registration of contract of apprenticeship, is deemed to be a "trainee" or an "apprentice", he would, nonetheless, be covered within the definition of "workman" under S.2 [s] of the I.D.Act.

8. In considering the claim of the workman for reinstatement against illegal termination of his services, it is not merely the label given to the employment which is decisive, but, what is to be ascertained is the actual nature of work and contract of employment. The labour court, which recorded the evidence, has come to a finding of fact that, in the first phase of his employment, the appellant worked as helper on work charge basis and after his induction as apprentice lineman, he continued to work on the same post with the same duties. The learned counsel appearing on behalf of the Board argued that there is no difference between the nature of work of lineman and helper. It may be so, but status of an employee, appointed as a lineman, with requisite qualifications and expertise, is different from employee, who is just helping him. The facts revealed before the Labour Court were that between the period 19 February, 1981 and 27 November, 1981, the appellant, virtually, served as helper and not as an apprentice. It is not in dispute that by service between 19 February 1981 to 27th November 1981 the employee had completed more than 240 days of continues service. The provisions of Sec.25-F require that the services

> of a workman, who has completed 240 days continues service, can be terminated only after service of one month's notice in writing or payment in lieu of notice and also only on payment of retrenchment compensation. Non observance of mandatory condition precedent in S.25F of the I.D.Act makes the termination of service or retrenchment of the workman illegal."

#. In view of observations made by the Division Bench of this Court and considering the fact that the workman was appointed on 23rd May, 1989 and his services came to be terminated on 23rd May, 1990 under the provisions of the Apprentices Act, 1961 but agreement of apprentice has not been registered under the provisions of the Apprentice Act and since no examination was given to the workman under the Apprentice Act and as such, no training was given to the workman under the Apprentice Act, this being the lapse on the part of the petitioner and considering the definition under Section 2[s] of the I.D.Act, the respondent who is considered to be workman under the provisions of the I.D.Act and though the workman has undisputedly completed 240 days continues service and at the time of termination of service, Section 25-F of the I.D.Act has not been complied with, then the order of termination becomes ab initio void and therefore, as held by the Apex Court in in case of MOHANLAL VS. MANAGEMENT OF M/S BHARAT ELECTRONICS LIMITED reported in AIR 1981 SC 1253, in such situation the order of termination becomes ab initio void, the workman is deemed to be continue in service for all purposes. Therefore, considering the decision of the Division Bench of this Court while dealing with identical facts before this Court, according to my opinion, the labour court has rightly considered the oral and documentary evidence which was led before the labour court and rightly come to the conclusion that the workman is entitled to reinstatement with continuity of service with full backwages of the interim period as the petitioner has not proved gainful employment of the respondent workman before the labour court. Therefore, in my view, the labour court has not committed any error while passing such award and as such, there seems no procedural irregularity committed by the labour court and even in case if two views are possible, then also, this Court having limited powers to interfere with award passed by the labour court or the tribunal.

#. Recently, the Apex Court has examined this question in reported Recently, the Apex Court has examined this question in reported decision in the case of ESSEN DEINKI V. RAJIV KUMAR, 2003 SC Labour & Service

page 13. Relevant paragraphs are as under:

2. Generally speaking, exercise of jurisdiction under Article 227 of the Constitution is limited and restrictive in nature. It is so exercised in the normal circumstances for want of jurisdiction, errors of law, perverse findings and gross violation of natural justice, to name a few. It is merely a revisional jurisdiction and does not confer an unlimited authority or prerogative to correct all orders or even wrong decisions made within the limits of the jurisdiction of the courts below. The finding of fact being within the domain of the inferior tribunal, except where it is a perverse recording thereof or not based on any material whatsoever resulting in manifest injustice, interference under the article is not called for.

3. The observations above, however, find affirmance in the decision of this Court in Nibaran Chandra Bag V. Mahendra Nath Ghughu. In Nibaran this Court has been rather categorical in recording that the jurisdiction so conferred is by no means appellate in nature for correcting errors in the decision of the subordinate courts or tribunals but is merely a power of superintendence to be used to keep them within the bounds of their authority. More recently, in Mani Nariman Daruwala Vs. Phiroz N.Bhatena this Court in a similar vein stated: (SCC pp. 149-50, para 18)

"In the exercise of this jurisdiction the High Court can set aside or ignore the findings of fact of an inferior court or tribunal if there was no evidence to justify such a conclusion and if no reasonable person could possibly have come to the conclusion which the court or tribunal who (sic) has come or in other words it is a finding which was perverse in law. Except to the limited extent indicated above the High Court has no jurisdiction to interfere with the findings of fact."

4. Needless to record that there is total unanimity of judicial precedents on the score that error must be that of law and patently on record committed by the interior tribunal so as to warrant intervention - it ought not to act as

a court of appeal and there is no dissension or even a contra-note being sounded at any point of time till date. Incidentally, the illegality, if there be any, in an order of an inferior tribunal, it would however be a plain exercise of jurisdiction under the article to correct the same as otherwise the law courts would fail to subserve the needs of the society since illegality cannot even be countenanced under any circumstances.

5. In this context reference may also be made to a still later decision of this Court in the case of Savita Chemicals (P) Ltd. Vs. Dyes & chemical Workers' Union wherein this Court in para 19 of the Report observed: (SCC p. 166)

"Under Article 227 of the Constitution of India, the High Court could not have set aside any finding reached by the lower authorities where two views were possible and unless those findings were found to be patently bad and suffering from clear errors of law."

##. In view of above discussion, there is no substance in the present petition and the same does not succeed and therefore, the same is dismissed accordingly.

Rule is discharged. Ad-interim relief, if any, stands vacated. No order as to costs.

Date : 3-5-2003 [H.K.Rathod, J.]

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